

W/O

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

FILED
DATE: <u>4-14-2011</u>
<u>1:00</u> O'Clock <u>P.M.</u>
JEANNE HICKS, CLERK
BY: <u>Tonya Brogdon</u>
Deputy

DIVISION PRO TEM B
HON. WARREN R. DARROW
CASE NO. V1300CR201080049

JEANNE HICKS, CLERK
BY: T. Brogdon, Deputy Clerk
DATE: April 14, 2011

TITLE:
STATE OF ARIZONA,

(Plaintiff)

v.

JAMES ARTHUR RAY,
(Defendant)

COUNSEL:
Yavapai County Attorney
Sheila Polk/Bill Hughes,
(via OnBase)
(For Plaintiff)

Thomas K. Kelly,
(via electronic mail)
(Co-Counsel for Defendant)

Luis Li/Brad Brian/Truc Do/Miriam Seifter
MUNGER TOLLES & OLSON LLP,
(via electronic mail)
(Co-Counsel for Defendant, *Pro Hac Vice*)

HEARING ON:	NATURE OF PROCEEDINGS	COURT REPORTER
TRIAL – Day 31		Mina Hunt
START TIME: <u>8:34 a.m.</u>		
APPEARANCES:	Sheila Polk, Counsel for State Bill Hughes, Co-Counsel for State Detective Ross Diskin, Case Agent James Arthur Ray, Defendant Tom Kelly, Co-Counsel for Defendant Luis Li, Co-Counsel for Defendant Truc Do, Co-Counsel for Defendant Miriam Seifter, Co-Counsel for Defendant	

The Court, Counsel, Detective Diskin, and Defendant, are present in the Courtroom. The Jury is not present.

Counsel argue their positions with regard to witness testimony of the bankruptcy filed by the Hamilton's, and tax status. Counsel for Defendant addresses 608B. The Court advises if there is actual evidence showing there would be a basis for the question, the Court will consider it under 608B. The Court advises it is reserving on the possible admission of tax status under 608 and would like to see a written Response.

Oral argument continues regarding examination of a witness regarding tax status. With regard to Ms. Mercer, the Court **finds** this would not be an appropriate area. The Court advises with regard to bankruptcy, appropriate questioning will be allowed.

Counsel for Plaintiff addresses information relating to reputation and requests the Court preclude the Defense from eliciting that information from Ms. Mercer. On a 403B basis and based on oral argument, the Court **finds** it is not admissible.

Counsel argue their positions with regard to Angel Valley Church affiliation and JRI. The Court **finds** it is a non 610 purpose, the questioning must be focused so there is no implication there is improper 610 purpose.

Counsel argue their positions with regard to the issue of permits, construction of the sweat lodge, witness testimony, and interviews. Counsel for Plaintiff advises the file is absent of any violation and if Defense has a violation, requests that it be disclosed. The Court advises if the Defense has evidence as to the structure, it will

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Counsel for Defendant makes offer of proof based on Ms. Mercer's interview with Detective Diskin in October 2009 as she represented she had never built a sweat lodge before and had received instructions via email from the Hamilton's and through independent research.

The Court advises to assert what the law is through a witness who does not know, is not appropriate.

Counsel for Defendant requests a brief continuance of this Trial to allow interviews to take place, and advises there is a Motion related which addresses the preservation of evidence that may exist.

The Court advises the theory of relevance appears to be viable and adds a factor into the aspect of knowledge of legal causation. The Court is not taking a position on the evidence.

Counsel for Defendant makes a Motion to continue the Trial based on the Court's ruling yesterday. Counsel for Plaintiff opposes continuance. Counsel argue their positions regarding the request for continuance and witness interviews. Counsel for Defendant requests a recess through next week and to begin Trial a week from next Tuesday.

Court and Counsel discuss the April 13, 2011 under advisement ruling and disclosure. Counsel for Defendant advises they are entitled to several Jury instructions, requests such instruction and advises it will be provided in writing.

IT IS ORDERED granting the request for continuance. The Trial will resume April 20, 2011.

Counsel for Defendant requests the Court review the Order which requests certain documents relating to the Haddow report relating to communications between the Sheriff's, County Attorney's office and Mr. Haddow. Discussion ensues regarding the Haddow report. Counsel for Defendant provides the document to the Court. The Court advises the documents handed to the Court is a copy of the 50th supplemental disclosure by the State and a cover email.

At 9:35 a.m. the Jury enters the Courtroom. The Court announces the Trial is postponed and advises Trial will resume April 20, 2011 at 9:15 a.m. The Jury is reminded of the admonition and exits the Courtroom.

~~~Recess~~~

At 10:12 a.m. Court reconvenes and all previously appearing parties are present. The Jury is not present.

Court and Counsel address Counsel for Defendant's Motion filed this date. Counsel for Defendant advises of Counsel's agreements and disagreements as stated on the record.

Counsel for Defendant requests if notes do not reflect opinions or statements of Mr. Haddow, that they identify contact was made.

**IT IS ORDERED** Counsel for Plaintiff shall preserve their notes.

Counsel for Defendant requests if there is exculpatory information contained in the notes, there is a separate basis for them to be provided those notes.

Counsel discuss communications and notes by Detective Diskin. Counsel for Defendant advises the email attached to their Motion as Exhibit A appears to be redacted and requests Counsel for Plaintiff provide an un-redacted version of that email. Counsel for Plaintiff concurs.

In regards to item 3, Counsel discuss the Court's Order directing information to be sent to Mr. Haddow. Counsel for Defendant advises in light of the Courts scheduling, requests Mr. Haddow produce it forthwith.

Pursuant to Rule 15.1(g), **IT IS ORDERED** Richard Haddow and Haddow Environmental Research organization provide any and all reports including drafts or preliminary reports, statements, and examination notes made in connection with the October 8, 2009 sweat lodge incident at Angel Valley. The information is to be provided forthwith by 5:00 p.m. Arizona time. Counsel for Defendant shall provide a proposed order.

Both Counsel advise items 1-5 are agreed to. Counsel for Defendant withdraws their request to interview Ms. Polk and Mr. Hughes.

Counsel argue their positions with regard to lawsuits against the Defendant and the Hamilton's. The Court advises it is not going to permit discussion of the federal lawsuit.

Court and Counsel discuss Counsel for Plaintiff's Motion in Limine regarding Pretrial issues filed October 26<sup>th</sup> pertaining to the testimony of Detective Diskin, pending Rule 15.6 Motions filed on March 14<sup>th</sup>, 24<sup>th</sup> and 28<sup>th</sup>, Motion to Compel Disclosure of Civil lawsuits filed against James Ray and JRI, and a pending issue from the Motion in Limine Counsel for Defendant filed pertaining to a video of the sweat lodge that the State intends to play during the testimony of Detective Diskin.

Court and Counsel for Defendant discuss a 403 determination made by the Court. The Court advises it did not allow discussion with regard to witness Melinda Martin. Counsel for Defendant requests the same ruling with regard to the 2005 sweat lodge incident as there was no delay in calling 911.

Counsel for Defendant advises several witnesses including Ms. Hamilton have various ways of characterizing Mr. Ray's demeanor after the sweat lodge ceremony and moves for all of that to be excluded.

~~~Recess~~~

At 11:41 a.m. Court reconvenes and all previously appearing parties are present. The Jury is not present.

The Court advises the Order relating to Mr. Haddow has been signed, is being processed and will be emailed.

Counsel for Plaintiff advises Counsel for Defendant prepared a written order in regards to all the matters that were discussed today and advises they do not think they need to reduce those matters to a written Order directed to the State. Court advises the Order should be clear and is on the record.

Counsel argue their positions with regard to Counsel for Plaintiff's 15.6 Motion dated March 14th pertaining to a letter dated March 7, 2011, an email dated March 6, 2011 and a letter dated March 5, 2001 regarding the Samarai game and breathing exercises. Counsel for Defendant advises these are hearsay, irrelevant, there is a 403 issue and moves for all of these not to be permitted to be admitted in any way.

IT IS ORDERED taking this matter under advisement.

Counsel argue their positions with regard to Counsel for Plaintiff's 15.6 Motion which is the State's request to use the certified articles of incorporation and the annual list for James Ray International from the Nevada Secretary of State's office, and disclosure.

IT IS ORDERED taking this matter under advisement.

Counsel argue their positions with regard to Counsel for Plaintiff's Motion in Limine regarding Pretrial issues pertaining to the testimony of Detective Diskin. Counsel for Plaintiff advises they filed their Motion last October requesting Counsel for Defendant be precluded from characterizing the arrest of Mr. Ray as a perp walk and requests the Defense be precluded from characterizing the arrest in that manner.

IT IS ORDERED that term will not be used.

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Counsel argue their positions with regard to the video marked as Exhibit 815. Counsel for Plaintiff advises they have blacked out the logo on the exhibit and request to use during Detective Diskins testimony. Counsel for Plaintiff requests the Defense review the edited Exhibit.

IT IS ORDERED taking this matter under advisement.

Counsel argue their positions with regard to Counsel for Plaintiff's Motion filed March 24th regarding production from the Defense of civil lawsuits. Counsel for Plaintiff advises Counsel for Defendant has not responded and requests the Court grant this.

IT IS ORDERED taking this matter under advisement.

Counsel argue their positions regarding disclosure, Counsel for Defendant's Motion to Reconsider, testimony of prior sweat lodge events, and Brady violation.

The Court advises with regard to the Motion to Reconsider 404B that was recently filed, **IT IS ORDERED** Counsel for Plaintiff shall respond by April 20, 2011.

Counsel for Plaintiff requests if the Court would like for them to respond to the Haddow issues, that Defense provide something to them to indicate how they believe the Haddow issue pertains to this so they can appropriately respond. Counsel for Plaintiff requests on the issue of simultaneous briefing, that Defense provide something prior to the time their response is due so they can then provide a better response. Counsel for Plaintiff requests they have time to respond to some sort of supplemental brief by the Defense. The Court advises there is enough to respond to in the Motion to Reconsider as it stands.

Counsel argue their positions with regard to testimony and relevance of the 911 call in 2005, and Rule 408 and 404B issues.

The Court advises this should have a written ruling, **IT IS ORDERED** taking this matter under advisement.

Counsel argue their positions with regard to relevance and causation of prior sweat lodge events, and witness testimony.

The Court directs the parties to keep the Court apprised of the discovery steps being taken with regard to the expert.

The Court stands adjourned for the day.

END TIME: 1:00 p.m.

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)
Stone & Magnanini, Co-Counsel Brown Family (e)
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)
Division PTB (e) (under advisement)
Victim Services (e)
Court Administration
Customer Service Supervisor, Verde
Verde Exhibit Clerk

Al - HC Sent